

P R O C E E D I N G S

NOVEMBER 10, 2010

1:30 O'CLOCK P.M.

THE CLERK: CALLING CASE NUMBER CR-10-245, UNITED STATES VERSUS KENNETH MARTIN KYLE.

COUNSEL, PLEASE STEP FORWARD AND STATE YOUR APPEARANCES.

MR. MARTIKAN: GOOD AFTERNOON, YOUR HONOR. OWEN MARTIKAN FOR THE UNITED STATES.

THE COURT: GOOD AFTERNOON.

MR. BIGELEISEN: THANK YOU, YOUR HONOR. DAVID MICHAEL BIGELEISEN FOR MR. KYLE.

THE COURT: WELCOME.

HELLO, MR. KYLE.

THE DEFENDANT: GOOD AFTERNOON.

THE COURT: YOUR CLIENT DOESN'T HAVE TO STAND NEXT TO YOU IF YOU DON'T WANT. HE CAN SIT AT COUNSEL STABLE.

MR. BIGELEISEN: I'M QUITE COMFORTABLE WITH HIM STANDING NEXT TO ME. HE WON'T HURT ANYONE.

THE COURT: THAT WASN'T THE IMPLICATION THAT HE WAS GOING TO HURT ANYBODY.

MR. BIGELEISEN: NO, THAT'S FINE.

YOU MAY SIT DOWN IF YOU LIKE.

THE COURT: JUST A COURTESY TO YOUR CLIENT. WE'RE GOING TO BE TALKING ABOUT LEGAL MATTERS.

1 BUT THAT'S FINE. STAY RIGHT THERE.

2 **MR. BIGELEISEN:** OKAY.

3 **THE COURT:** LET ME ASK FIRST, HAS THERE BEEN ANY
4 PROGRESS? I NOTICE FROM THE GOVERNMENT'S RESPONSE AND THE REPLY
5 THAT THE PARTIES HAD BEEN MOVING TOGETHER, SO I WONDERED IF
6 THERE HAD BEEN ANY CHANGES VIS-A-VIS WHAT THE GOVERNMENT HAS
7 TURNED OVER OR WHAT THE DEFENDANT HAS DEMANDED.

8 I'LL START WITH YOU, MR. MARTIKAN. ANY FURTHER
9 DEVELOPMENTS THAT I SHOULD KNOW ABOUT?

10 **MR. MARTIKAN:** MAYBE TWO. I DON'T KNOW HOW
11 SIGNIFICANT THEY ARE IN TERMS OF THE DISPUTE. ONE IS THAT THERE
12 WAS -- ONE OF THE SEARCH WARRANTS WAS ACTUALLY A ROLLOVER SEARCH
13 WARRANT. IT WAS THE FINAL ROLLOVER SEARCH WARRANT OF THE
14 DEFENDANT'S APARTMENT RELATING TO HIS COMPUTER, WHICH I DID NOT
15 HAVE A FILE STAMP. MY AGENT DID NOT HAVE A FILE STAMPED COPY
16 OF. SO I JUST PRODUCED ONE THAT WAS NOT FILE STAMPED.

17 MY INTENTION AT THE TIME WAS TO MOVE TO UNSEAL IT.
18 BUT THEN, WHEN I LOOKED AT IT I REALIZED I CAN'T REALLY MOVE TO
19 UNSEAL IT BECAUSE OF SOME OF THE INFORMATION THAT IS IN IT. SO
20 INSTEAD I OBTAINED A COPY OF IT, WHICH I ACTUALLY HAVE, AND I'M
21 GOING TO PRODUCE IT. I JUST HAD TO RUN IN HERE FROM OAKLAND, SO
22 I DIDN'T GET AN EXTRA COPY OF IT. THAT'S ONE ISSUE.

23 THE SECOND IS BY WAY OF EXPLANATION REGARDING DNA
24 ANALYSIS, WE HAD WAITED FOR SOMETIME TO GET A DNA SAMPLE FROM
25 THE VICTIM FROM MISSOURI -- FROM MISSOURI, LOCAL LAW ENFORCEMENT

1 IN MISSOURI. WE DID GET THAT.

2 NOW, THE ISSUE IS, FRANKLY, COMING UP WITH THE MONEY
3 TO TEST IT. THE AGENCY HAS BEEN TOLD THEY DON'T HAVE THAT MONEY.
4 AND SO WE'RE TRYING TO FIND THAT IN OTHER WAYS. SO IT'S NOT AS
5 IF THERE'S SOME DELAY IN A LAB. IT'S REALLY COMING UP WITH THE
6 MONEY IN ORDER TO TEST IT.

7 SO THERE'S NOT ANYTHING THAT HAS BEEN DONE THAT IS
8 BEING WITHHELD.

9 **THE COURT:** IS THIS FROM THE FEDERAL GOVERNMENT
10 COMING UP WITH THE MONEY?

11 **MR. MARTIKAN:** YES. I MEAN, I'M SURE THE FEDERAL
12 GOVERNMENT AT LARGE HAS THE MONEY. IT'S JUST THE AGENCY, THE
13 PROSECUTING AGENCY HERE, ICE, THE INVESTIGATING AGENCY DOES NOT
14 HAVE THE MONEY. THEY WILL NOT --

15 **THE COURT:** HOW ABOUT THE FBI?

16 **MR. MARTIKAN:** WE'RE HUNTING FOR THAT AS ONE SOURCE
17 THAT WE'RE HUNTING FROM.

18 **THE COURT:** ALL RIGHT. ANYTHING THAT YOU WOULD LIKE
19 TO SAY ABOUT THOSE, WHAT MR. MARTIKAN JUST SAID?

20 **MR. BIGELEISEN:** WELL, AS FAR AS THE DNA IS
21 CONCERNED, I THINK THAT THE QUESTION I'D LIKE TO ASK THE
22 GOVERNMENT THROUGH THE COURT IS EITHER WHEN WILL THEY HAVE THE
23 RESULTS? OR SHORT OF THAT, WHEN WILL THEY KNOW WHEN THEY WILL
24 HAVE THE RESULTS?

25 **THE COURT:** WELL, IT SOUNDS LIKE THEY MAY NEVER HAVE

1 THE RESULTS. BUT I THINK THE SECOND ONE IS WHEN ARE -- I GUESS
2 I'LL PUT THE QUESTION A DIFFERENT WAY, MR. MARTIKAN.

3 WHEN WILL YOU KNOW WHETHER THE MONEY TO TEST THE DNA
4 CAN BE FOUND? AND THEN, THE NEXT QUESTION WILL BE: FROM THAT
5 TIME, HOW LONG WOULD IT TAKE TO DO THE DNA TEST?

6 **MR. MARTIKAN:** I WOULD SAY THAT WE WILL HAVE THE
7 MONEY ISSUE RESOLVED THIS MONTH. AS FAR AS GETTING THE RESULTS
8 DONE THAT SHOULD ACTUALLY BE FAIRLY QUICK BECAUSE WE'RE GOING TO
9 HAVE TO PAY A LOT OF MONEY TO HAVE IT DONE QUICKLY.

10 **THE COURT:** RIGHT.

11 **MR. MARTIKAN:** SO THAT WILL PROBABLY BE TWO WEEKS,
12 YOU KNOW, AFTER THE MONEY IS --

13 **THE COURT:** I'M JUST A LITTLE SURPRISED THAT THE FBI
14 WITH THE RESOURCES, AND THE FBI WAS THE LEAD AGENCY IN THIS
15 CASE, OR AT LEAST A SIGNIFICANT PART OF IT, DOESN'T HAVE A LAB
16 IN PLACE THAT CAN TEST DNA.

17 **MR. MARTIKAN:** RIGHT. AND WELL --

18 **THE COURT:** ESPECIALLY BECAUSE THERE'S A STATUTE NOW
19 THAT WE BOTH KNOW, BECAUSE IT'S IN EVERY PLEA AGREEMENT, THAT
20 PROVIDES A DEFENDANT WITH A RIGHT TO HAVE A DNA TEST TO PROVE
21 ACTUAL INNOCENCE AFTER THE CASE IS CONCLUDED.

22 **MR. MARTIKAN:** CORRECT.

23 **THE COURT:** SO YOU WOULD THINK THAT THERE WOULD BE
24 THE RESOURCES TO COMPLY WITH THAT STATUTE.

25 **MR. MARTIKAN:** I THINK SO. THE ISSUE WAS -- REALLY

1 BEGAN WITH ICE. ICE IS THE MAIN INVESTIGATING AGENCY. THEY ARE
2 THE ONES THAT SUDDENLY COULD NOT COME UP WITH THIS MONEY.

3 SO I THINK WE MIGHT GET -- WE ARE GOING TO GET THE
4 MONEY, AND IT PROBABLY WILL COME FROM THE FBI. IF NOT, IT WILL
5 COME FROM SOMEWHERE.

6 **THE COURT:** ALL RIGHT. AND THEN, SO YOUR THINKING
7 SOMETIME BY NO LATER THAN THE MIDDLE OF DECEMBER YOU'LL HAVE THE
8 RESULTS OF ANY DNA TEST?

9 **MR. MARTIKAN:** YES, I THINK THAT'S FAIR ENOUGH.

10 **THE COURT:** ALL RIGHT. SO I'M GOING TO ORDER THAT
11 NOW, HOLD THE GOVERNMENT -- AND THAT WILL GIVE YOU SOME LEVERAGE
12 WITH YOUR AGENCIES.

13 SO, MS. OTTOLINI, LET'S PICK A DATE AT RANDOM IN
14 MID-DECEMBER.

15 **THE CLERK:** DECEMBER 17TH.

16 **THE COURT:** WILL BE THE LAST DAY TO TURN OVER TO THE
17 DEFENDANT RESULTS OF DNA TESTS, ANY DNA TESTS DONE IN THIS CASE
18 THAT'S RELEVANT.

19 **MR. MARTIKAN:** THANK YOU, YOUR HONOR.

20 **THE COURT:** WHICH IS RELEVANT, WHICH WOULD BE PRETTY
21 MUCH ANY TEST THAT IS DONE.

22 ALL RIGHT. IS THAT SATISFY TO YOU, COUNSEL?

23 **MR. BIGELEISEN:** YES. THAT'S FINE.

24 **THE COURT:** NOW, LET ME MOVE ON TO THE MOTION. THE
25 FIRST ISSUE -- I'VE TRIED TO BOIL THIS DOWN TO WHAT IS BEING

1 STILL AT ISSUE HERE. AND THERE MAY BE OTHER THINGS THAT I HAVE
2 MISSED. BUT I THINK I'VE BOILED IT DOWN PRETTY WELL FROM THE
3 PAPERS.

4 THE FIRST IS THE IDENTITY OF THE -- THE IDENTITY OF
5 THE AGENTS WHO CONDUCTED THE INVESTIGATION. AND THE GOVERNMENT
6 IN ITS OPPOSITION STATES THAT THE IDENTITY OF THE AGENTS WHO
7 HAVE CONDUCTED THE INVESTIGATION HAVE BEEN DISCLOSED, EVEN ONE
8 INADVERTENTLY. ONE WHO PROBABLY THE GOVERNMENT DIDN'T INTEND TO
9 DISCLOSE. AND THAT IT IS ONLY HOLDING CODE NAMES OF OTHER AGENTS
10 TO AVOID JEOPARDIZING ONGOING INVESTIGATIONS.

11 IS THAT STILL THE GOVERNMENT'S POSITION?

12 **MR. MARTIKAN:** VERY CLOSE TO THAT, YOUR HONOR. THE
13 AGENTS' IDENTITY THAT IT'S MY UNDERSTANDING THE DEFENDANT IS
14 ASKING FOR WAS DISCLOSED INADVERTENTLY, I THINK AT PROBABLY THE
15 VERY, VERY BEGINNING OF THE CASE. AND AS WAS DISCLOSED THE
16 UNDERCOVER CODE NAME THAT THAT AGENT WAS DOING -- WAS USING,
17 WHICH IS ACTUALLY PROBABLY THE MORE SIGNIFICANT ISSUE FOR THE
18 GOVERNMENT.

19 SO THAT'S ACTUALLY IN DEFENSE COUNSEL'S POSSESSION.
20 AND WE'VE DISCUSSED ENTERING INTO A STIPULATED PROTECTIVE ORDER
21 TO PROTECT THAT, AND THAT HAS BEEN DONE.

22 I MEAN, THE PROTECTIVE ORDER HASN'T BEEN DONE, BUT
23 THE DISCLOSURE HAS BEEN DONE.

24 THERE WAS ANOTHER UNDERCOVER AGENT IN ANOTHER OFFICE
25 WHO ALSO FOUND A LEAD USING A DIFFERENT CODE NAME WITH THE SAME

1 DEFENDANT. THAT LEAD WAS NOT CHARGED. IT HAS NOT BE CHARGED YET
2 IN THIS CASE.

3 **THE COURT:** WHEN YOU SAY "THE LEAD HASN'T BEEN
4 CHARGED," YOU MEAN THAT THE INFORMATION RESULTING FROM THE
5 LEAD?

6 **MR. MARTIKAN:** EXACTLY. IT'S PASSED ON, BUT IT HASN'T
7 RESULTED -- IT'S NOT THE SUBJECT OF A CHARGE PENDING IN THIS
8 CASE.

9 AND IT'S MY UNDERSTANDING THE DEFENSE IS NOT SO
10 INTERESTED IN THAT INFORMATION. IF THEY ARE, I WOULD BE WILLING
11 TO PROVIDE THE AGENT'S NAME SUBJECT TO THAT SAME PROTECTIVE
12 ORDER, BUT I WOULD NOT BE WILLING TO PROVIDE THE CODE NAME.

13 **THE COURT:** OKAY. SO WITH OR WITHOUT THAT NAME,
14 DEPENDING UPON WHAT THE DEFENDANT'S POSITION IS, THE GOVERNMENT
15 WILL HAVE PROVIDED WITH THAT ONE POSSIBLE EXCEPTION -- IT MAY
16 NOT BE AN EXCEPTION -- ALL OF THE IDENTITIES, THE NAMES OF THE
17 AGENTS, CORRECT?

18 **MR. MARTIKAN:** YES, YOUR HONOR.

19 **THE COURT:** ALL RIGHT. WHAT'S THE DEFENDANT'S
20 POSITION? IT SOUNDS LIKE YOU ARE GETTING WHAT YOU WANT EXCEPT
21 POSSIBLY FOR ALL OF THE CODE NAMES BECAUSE THERE'S A CODE --
22 THERE'S ONE CODED AGENT, IF YOU WILL, WHOSE INFORMATION MAY NOT
23 BE RELEVANT TO THE INVESTIGATION.

24 **MR. BIGELEISEN:** YOUR HONOR, I REREAD THE DISCLOSURE
25 WHICH THE GOVERNMENT GAVE ME. AND AS I REREAD IT, IT APPEARS TO

1 ME THAT THERE'S A CODE NAME FOR THE AGENT THAT IS INVESTIGATING,
2 BUT NOT THE AGENT'S IDENTITY ITSELF.

3 IF I'M MISTAKEN, I APOLOGIZE. BUT IT APPEARS THAT THE
4 GOVERNMENT DOESN'T OBJECT TO PROVIDING THAT. AND BEFORE YOU TOOK
5 THE BENCH MR. MARTIKAN AND I SPOKE, AND I SAID THAT I ONLY WANT
6 THAT INFORMATION FOR THE PURPOSE OF THIS CASE, AND THAT I'D BE
7 HAPPY TO MEET AND CONFER WITH HIM ABOUT A PROTECTIVE ORDER, IF
8 THAT'S APPROPRIATE.

9 **THE COURT:** WELL, SOUNDS LIKE, THOUGH -- I MEAN,
10 SOMETIMES THE DEVIL'S IN THE DETAILS. BUT I DON'T THINK THAT'S
11 THE CASE HERE. I THINK WE HAVE AN AGREEMENT.

12 THE GOVERNMENT IS WILLING TO PROVIDE THE NAMES OF ALL
13 THE AGENTS. YOU ALREADY HAVE THE CODE NAME OF THE ONE THAT
14 ACTUALLY RESULTED IN SOME OF THE CHARGES HERE.

15 SO THE GOVERNMENT IS AGREEING TO DO SO. I EXPECT THE
16 GOVERNMENT -- JUST A MATTER OF MAYBE LOGISTICS, MAYBE -- BECAUSE
17 I HAPPEN -- IN REVIEWING THE MATERIALS SUBMITTED BY THE PARTIES
18 I SAW BOTH THE NAME AND THE CODE NAME OF THE AGENT INVOLVED
19 HERE.

20 SO I HAVE IT IN MY MATERIALS. IF YOU DON'T, MR.
21 MARTIKAN, YOU ARE WILLING TO GIVE IT TO THE DEFENDANT, RIGHT?

22 **MR. MARTIKAN:** I'LL POINT IT OUT TO HIM, YES, YOUR
23 HONOR.

24 **THE COURT:** RIGHT. AND WITH RESPECT TO THIS UNNAMED
25 CODED NAMED AGENT, WHICH HAS NOT RESULTED IN ANY CHARGES, I

1 ASSUME YOU'RE WILLING TO FORGO THAT, AT LEAST AT THIS TIME?

2 **MR. BIGELEISEN:** I BELIEVE THE GOVERNMENT'S WILLING
3 TO GIVE ME THE NAME. AND AS FAR AS THE CODE NAME IS CONCERNED
4 WHY DON'T WE CROSS THAT BRIDGE WHEN WE COME TO IT?

5 **THE COURT:** ALL RIGHT. SO YOU'LL GIVE COUNSEL THE
6 NAME?

7 **MR. MARTIKAN:** YES, YOUR HONOR.

8 **THE COURT:** GREAT. SO THAT WILL PRETTY MUCH RESOLVE
9 FOR THE MOMENT AT LEAST THAT, THE IDENTITY OF AGENTS AND CODE
10 NAMES OF AGENTS WHO CONDUCTED THE INVESTIGATION.

11 THE NEXT LARGE CATEGORY IS THE -- HAS TO DO WITH THE
12 INVESTIGATION IN MISSOURI. IT'S NOT CLEAR TO THE COURT LOOKING
13 AT THE PAPERS WHAT THE DEFENDANT IS SEEKING.

14 I READ, YOU KNOW, THE GOVERNMENT'S ANALYSIS OF THE
15 U.S. VERSUS FORT, F-O-R-T, CASE, AND THE DEFENDANT'S RELIANCE ON
16 THIS COURT, JUDGE ALSUP'S DECISION IN THE CERNA, C-E-R-N-A, CASE
17 ADDRESSING THE SCOPE OF THE GOVERNMENT'S OBLIGATION TO OBTAIN
18 AND DISCLOSE BRADY MATERIALS FROM STATE AND LOCAL AGENCIES.

19 SO I'D LIKE TO GET BETTER CLARIFICATION, STARTING
20 FROM THE DEFENDANT AS THE REQUESTING PARTY, AS TO EXACTLY WHAT
21 HE WANTS, WHAT'S AT ISSUE AND WHAT THE GOVERNMENT IS --
22 GOVERNMENT'S POSITION WITH RESPECT TO ITS BRADY OBLIGATIONS IN
23 LIGHT OF WHAT THE DEFENDANT WANTS, SO --

24 **MR. BIGELEISEN:** OKAY. WELL, THERE ARE TWO PRONGS FOR
25 SEEKING THE MATERIAL THAT'S IN MISSOURI. ONE IS TO THE EXTENT

1 THAT IT'S INFORMATION THAT THE GOVERNMENT IS GOING TO RELY ON IN
2 ITS CASE-IN-CHIEF THAT FALLS UNDER RULE 16. OR IF IT'S HELPFUL
3 TO THE DEFENSE.

4 IN A MORE POINTED WAY, I'M SURE THAT THE COURT'S
5 DETECTED IMMEDIATELY THAT MOST OF OUR MOTION IS DIRECTED TOWARD
6 A MOTION TO SUPPRESS, WHICH WE CONTEMPLATE, AND AN INVENTORY OF
7 THAT WHICH IS TO BE SUPPRESSED WILL BE HELPFUL, IF SUCH IS TO BE
8 PRESENTED.

9 SO THAT IS -- THAT IS THE THINKING OF IT. THE
10 THINKING CONCERN, OF COURSE, IS WORTH EXAMINING. AND IT APPEARS
11 AS THOUGH AT LEAST A LOT OF IT WAS A JOINT PROJECT BETWEEN THE
12 FEDERAL AGENTS AND THE MISSOURI PEOPLE.

13 AND SO I THINK IT'S AVAILABLE TO THE GOVERNMENT, AND
14 ALL THEY NEED TO DO IS ASK FOR IT AND GIVE IT TO US.

15 **THE COURT:** WELL, ISSUE IS REALLY GOING TO BE -- AND
16 I GUESS I'LL ASK YOU, MR. MARTIKAN: WHAT IS THE "IT" THAT WE'RE
17 TALKING ABOUT?

18 SO I GUESS I SHOULD SAY BECAUSE IT SEEMED TO THE
19 COURT THAT THIS INVESTIGATION WAS -- YOU KNOW, THE COURSE OF THE
20 INVESTIGATION IS PRETTY TRANSPARENT. THIS IS NOT LIKE A -- THIS
21 IS NOT LIKE AN MS13 CASE WHERE THERE'S SO MANY TENTACLES.

22 THIS IS A CASE THAT IS VERY LINEAR IN TERMS OF
23 VARIOUS -- THE CHATTING ON LINE FOLLOWED BY THE WARRANT,
24 FOLLOWED BY THE SAN FRANCISCO POLICE, FOLLOWED BY THE BORDER
25 SEARCH, FOLLOWED BY THE INVESTIGATION IN MISSOURI, THE LOCATION

1 OF THE WOMAN AND THE CHILD IN MISSOURI, AND THEIR INVESTIGATION
2 AND CHARGES.

3 IT SEEMS PRETTY TRANSPARENT TO THE COURT. SO I GUESS
4 I'LL ASK IN KIND OF A SORT OF A VERNACULAR WAY OF THE
5 GOVERNMENT: DO YOU HAVE ANY IDEA WHAT THE DEFENDANT IS TALKING
6 ABOUT? WHAT HAVE YOU NOT TURNED OVER THAT YOU KNOW OF?

7 AND THEN, THE NEXT QUESTION WOULD BE: CAN YOU OBTAIN
8 IT, AND WOULD YOU BE WILLING TO TURN IT OVER?

9 **MR. MARTIKAN:** OKAY. TO ANSWER THE FIRST QUESTION, WE
10 HAVE NOTHING HAS NOT BEEN TURNED OVER. WE'VE TURNED OVER ALL THE
11 REPORTS THAT WE RECEIVED FROM MISSOURI IN REDACTED FORM. BUT
12 PURELY TO TAKE OUT VICTIMS AND INNOCENT WITNESSES' IDENTIFIERS
13 AND LOCATION, CONTACT INFORMATION.

14 SO THAT'S THE SHORT ANSWER. AS FAR AS --

15 **THE COURT:** AND THE FRUITS OF THE IDENTITY OF OR THE
16 ACCESS TO THE FRUITS OF ALL OF THE RELEVANT SEARCHES?

17 **MR. MARTIKAN:** YES. NOW, TO DISCUSS A LITTLE BIT HOW
18 THIS INVESTIGATION TURNED INTO THE PARALLEL MISSOURI
19 INVESTIGATION -- AND THIS WAS A LEAD. THE LEAD TO THE VICTIM IN
20 MISSOURI WAS A LEAD THAT WAS DEVELOPED HERE.

21 WE SIMPLY CONTACTED MISSOURI LAW ENFORCEMENT TO GET
22 THE KID OUT OF THE SITUATION AS QUICKLY AS POSSIBLE. THAT IS
23 WHERE THE -- I WON'T SAY THAT'S WHERE THE COOPERATION ENDED, BUT
24 THERE WAS -- THERE'S NO JOINT INVESTIGATION. THEY SIMPLY WENT
25 THEIR WAY WITH THEIR INVESTIGATION, AND WE TRIED TO COOPERATE

1 WITH THEM, AND WE'VE GOTTEN SOME COOPERATION.

2 BUT WHAT OTHER INFORMATION THEY HAVE THAT WE DON'T
3 KNOW ABOUT --

4 **THE COURT:** WELL, FOR EXAMPLE, YOU JUST MENTIONED
5 SOMETHING THAT APPARENTLY DNA OF THE CHILD VICTIM WAS TAKEN.

6 **MR. MARTIKAN:** YES.

7 **THE COURT:** SO CLEARLY THAT'S AN ELEMENT OF THE
8 MISSOURI INVESTIGATION THAT THE GOVERNMENT INTENDS TO RELY UPON
9 IF IT -- AND, YOU KNOW, TO THE EXTENT THAT IT WERE -- IT PROVED
10 TO BE ANYTHING OTHER THAN A POSITIVE, IT MIGHT POSSIBLY BE BRADY
11 MATERIAL.

12 **MR. MARTIKAN:** CORRECT. AND WE HAVE NO ISSUE WITH
13 PROVIDING THE RESULTS OF THAT EITHER WAY TO THE DEFENSE. I THINK
14 THAT'S -- FROM THE GET-GO THAT HAS NOT BEEN OUR POINT OF
15 CONTENTION, THE DNA.

16 **THE COURT:** SO YOUR REPRESENTING TO THE COURT THAT
17 YOU'RE NOT AWARE OF ANY INFORMATION DEVELOPED DURING THE
18 MISSOURI INVESTIGATION THAT HAS NOT BEEN -- THAT YOU HAVE NOT
19 TURNED OVER TO THE DEFENDANT?

20 **MR. MARTIKAN:** CORRECT. THE ONLY ISSUE THAT -- THE
21 ONLY REMAINING ISSUE, REALLY, YOUR HONOR, IS WHETHER THE OTHER
22 DEFENDANT TESTIFIES AS A WITNESS IN THIS CASE. AND ALL THE
23 JENCKS, FRANKLY, FOR THAT HAS ACTUALLY BEEN TURNED OVER. SO I
24 DON'T THINK THERE IS ANYTHING LEFT.

25 **THE COURT:** SO AS A MATTER OF -- LET'S SAY A MATTER

1 OF LAW, WHAT'S THE GOVERNMENT'S POSITION WITH RESPECT TO THE
2 SCOPE OF YOUR -- OF THE GOVERNMENT'S BRADY OBLIGATIONS WITH
3 REGARD TO THE MISSOURI INVESTIGATION?

4 **MR. MARTIKAN:** AS A MATTER OF LAW -- AND BY "MISSOURI
5 INVESTIGATION," YOUR HONOR, WE REFER -- I'M REFERRING TO THE
6 LOCAL LAW ENFORCEMENT INVESTIGATION.

7 CLEARLY, AS FAR AS THE FEDERAL INVESTIGATION IN
8 MISSOURI, WE'RE ALL PART OF THE SAME FAMILY.

9 **THE COURT:** LET'S SAY HYPOTHETICALLY, FOR EXAMPLE,
10 THE LOCAL -- THIS WILL BE A VERY CRISP POINT. THE LOCALS
11 INTERVIEWED THIS WOMAN WHOSE DAUGHTER WAS THE VICTIM.

12 AND LET'S ASSUME THE LOCAL AUTHORITIES INTERVIEWED
13 HER, AND SHE MADE SOME -- JUST MAKING IT UP. THERE'S NOTHING IN
14 THE PAPERS TO SUGGEST THIS -- BUT LET'S SAY SHE MADE AN
15 EXCULPATORY OR INCONSISTENT STATEMENT.

16 TECHNICALLY PART OF THE LOCAL INVESTIGATION, WOULD
17 YOU VIEW THAT AS YOUR OBLIGATION TO ASK THE AUTHORITIES FOR SUCH
18 INFORMATION UNDER BRADY?

19 **MR. MARTIKAN:** AS A LEGAL MATTER, NO. I WOULD NOT.

20 **THE COURT:** ALL RIGHT. NOW, AS A PRACTICAL MATTER?

21 **MR. MARTIKAN:** AS A PRACTICAL MATTER, WE ARE ALREADY
22 ASKING THEM FOR EVERYTHING. AND WHAT WE LEARN ABOUT AND OBTAIN
23 FROM THEM I CONSIDER, EVEN THOUGH I ACTUALLY DON'T KNOW AS A
24 TECHNICAL MATTER THIS IS TRUE, I CONSIDER IT PART OF OUR
25 DISCOVERY OBLIGATION TO GO THROUGH ANYTHING WE GET FROM THEM FOR

1 BRADY OR OTHER DISCOVERABLE MATERIAL.

2 **THE COURT:** WELL, COUNSEL, MY TENTATIVE VIEW ON THIS
3 GIVEN THE STATE OF THIS RECORD AND THE REPRESENTATIONS AND
4 ARGUMENTS IS TO DENY THE REQUEST WITHOUT PREJUDICE TO A MORE
5 SPECIFIC SHOWING FROM THE DEFENDANT AS TO WHAT IS REALLY AT
6 ISSUE AND WHAT HE REALLY WANTS THAT HE HAS REASON TO BELIEVE THE
7 GOVERNMENT HAS.

8 THE GOVERNMENT'S REPRESENTED THEY HAVE TURNED OVER
9 EVERYTHING THEY HAVE. THEY KNOW OF NOTHING ELSE, AND THEY HAVE
10 EVEN SAID THAT TO THE EXTENT THAT THEY COME INTO CONTACT FROM
11 LOCAL SOURCES TO MATERIAL THAT WOULD BE OTHERWISE DISCOVERABLE
12 THEY ARE GOING TO TURN IT OVER TO YOU.

13 SO I DON'T KNOW THERE'S ANYTHING MORE THE COURT CAN
14 DO AT THIS POINT OTHER THAN TO SAY DENY THE REQUEST WITHOUT
15 PREJUDICE. AS EVENTS ON THE GROUND UNFOLD, AS IT WERE, YOU CAN
16 ASK THE GOVERNMENT, AND IF THEY WON'T GIVE IT TO YOU THEN YOU
17 CAN COME BACK TO THE COURT.

18 IS THAT ACCEPTABLE?

19 **MR. BIGELEISEN:** WELL, THE ANSWER IS "YES," BUT MAY I
20 REMARK?

21 **THE COURT:** OF COURSE.

22 **MR. BIGELEISEN:** AND THAT IS THAT WHAT WE'RE ASKING
23 THE GOVERNMENT FOR IS THAT WHICH WE DON'T KNOW EXISTS OR DOESN'T
24 EXIST, BUT WHICH WE SUSPECT HAS BEEN DONE IN MISSOURI THAT THE
25 GOVERNMENT DOESN'T KNOW ABOUT. AND THAT'S -- AND SO IT'S

1 DIFFICULT FOR ME TO SPECIFY WHAT THAT IS TO THE COURT TODAY.

2 AND SO I SUPPOSE THAT IN ANOTHER WAY THIS APPLICATION
3 TO THE COURT IS IN THE FORM OF AN INQUIRY TO THE GOVERNMENT
4 SAYING:

5 "PLEASE ASK THE PEOPLE IN MISSOURI FOR WHAT THEY HAVE
6 AND THEN GIVE IT TO US."

7 **THE COURT:** ALL RIGHT. WHAT INQUIRIES HAVE YOU MADE
8 VIS-A-VIS IN GENERAL TERMS OF THE AUTHORITIES FOR INFORMATION
9 THAT MIGHT ADDUCE SOMETHING TO WHICH THE DEFENDANT UNDER YOUR
10 RUBRIC MIGHT BE ENTITLED?

11 **MR. MARTIKAN:** WELL, YOUR HONOR, WE ARE -- AND THIS
12 HAS BEEN AN ONGOING PROCESS -- WE'RE TRYING TO GET EVERYTHING WE
13 CAN FROM THEM. AND, OBVIOUSLY, WE WILL SHARE WHAT WE HAVE WITH
14 THEM. SO -- AND THAT'S NOT JUST FOR PURPOSES OF MAKING A BRADY
15 INQUIRY. THAT'S FOR HELPING OUR CASE.

16 SO THAT'S AN ONGOING PROCESS. WE UNDERSTAND, YOU
17 KNOW, THEY HAVE ANOTHER DEFENDANT OVER THERE. THEY HAVE A
18 VICTIM. AND SO WE ARE LOOKING FOR ANYTHING THEY HAVE. I DON'T
19 KNOW THAT WE -- I DON'T HAVE A SUSPICION THAT THEY ARE
20 CONCEALING SOMETHING FROM US OR THAT THERE'S SOMETHING THAT WE
21 DON'T KNOW ABOUT THAT THEY HAVE.

22 **THE COURT:** IS THIS DEFENDANT CHARGED IN MISSOURI?

23 **MR. MARTIKAN:** YES.

24 **THE COURT:** AND ARE YOU IN CONTACT WITH THE DEFENSE
25 ATTORNEY IN MISSOURI?

1 **MR. BIGELEISEN:** I HAVE NOT BEEN ABLE TO REACH THE
2 DEFENSE ATTORNEY. I'VE PLACED SOME PHONE CALLS TO HIS OFFICE.
3 I HAVE SPOKEN WITH THE PROSECUTOR.

4 **THE COURT:** OKAY. WELL, I THINK IT WOULD BE --
5 SOUNDS LIKE YOU HAVE A PIPELINE TO BOTH SIDES, AS THE GOVERNMENT
6 DOES. SO I'M GOING TO DENY THIS REQUEST WITHOUT PREJUDICE.

7 IF, AS YOUR INVESTIGATION GOES ALONG -- AND, AGAIN,
8 YOU'RE NOT DOING THIS BLINDLY, COUNSEL. YOU ARE SPEAKING TO THE
9 RIGHT PEOPLE AND DOING AN EFFECTIVE JOB IN DOING SO. IF YOU
10 COME UP WITH SOMETHING -- IF THEY GO:

11 "OH, YEAH. AND, BY THE WAY, THERE'S THIS OTHER
12 INFORMANT OUT THERE WHO LED US TO THIS DEFENDANT," OR
13 WHATEVER, YOU CAN CERTAINLY HAVE A DIALOGUE WITH MR. MARTIKAN,
14 AND IF YOU'RE NOT SATISFIED COME BACK TO THE COURT.

15 **MR. BIGELEISEN:** THANK YOU.

16 **THE COURT:** I'M NOT GOING TO PUT A DEADLINE ON THAT,
17 PER SE, BECAUSE AS FAR AS I KNOW NOW THE MATTER, UNTIL SOMEBODY
18 OPENS IT AGAIN, IS CLOSED. AND THE INVESTIGATION IS GOING TO
19 CONTINUE. AND I'M NOT SURE WHAT, IF ANYTHING, WILL COME UP THAT
20 WILL BE IN DISPUTE.

21 IT SOUNDS LIKE IT WON'T BE IN DISPUTE BECAUSE THE
22 GOVERNMENT WANTS TO GET AS MUCH AS IT CAN. AND THEY HAVE AGREED
23 TO GIVE YOU WHATEVER THEY CAN GIVE YOU. SO I'M NOT GOING TO GO
24 ANY FURTHER WITH THAT.

25 SO WITH RESPECT TO -- WE'VE DEALT WITH THE DNA. THE

1 NEXT QUESTION, GENERAL DEMAND OR REQUEST THAT THE DEFENDANT HAS
2 MADE IS INFORMATION CONCERNING THE SEARCH AT SAN FRANCISCO
3 INTERNATIONAL AIRPORT OF THE DEFENDANT'S COMPUTER AND CELL PHONE
4 AND THE LIKE.

5 AND THE DEFENDANT IS ASKING FOR -- THEY WANT TO KNOW
6 WHAT THE INFORMATION WAS THAT THE ICE OFFICIALS HAD AT THE TIME
7 THEY CONDUCTED THEIR SEARCH. AND DEFENDANT CLAIMS THAT THIS
8 INFORMATION IS NECESSARY TO PREPARE A MOTION TO SUPPRESS.

9 SO MY QUESTION IS, COUNSEL: IT'S CORRECT THAT YOU
10 AGREE, AND THE PAPERS SEEM TO INDICATE, THAT THIS SEARCH TOOK
11 PLACE AT THE BORDER OR THE FUNCTIONAL EQUIVALENT OF A BORDER,
12 CORRECT?

13 **MR. BIGELEISEN:** AT LEAST SOME OF IT DID, YES. YES.
14 THAT'S CORRECT.

15 **THE COURT:** WHICH PART DIDN'T?

16 **MR. BIGELEISEN:** I BELIEVE THAT -- OKAY. LET ME PAUSE
17 TO BE COMPLETE. PLEASE FORGIVE ME.

18 MY IMPRESSION IS THAT THE ICE OFFICIALS SEARCHED THE
19 CELL PHONE AT THE BORDER. THAT'S MY IMPRESSION. OR SHORTLY
20 AFTERWARD.

21 I BELIEVE THAT THEY SEARCHED THE COMPUTER AT THE
22 BORDER, AND THEN AT ANOTHER TIME AFTERWARD, AS WELL.

23 **THE COURT:** ALL RIGHT.

24 **MR. BIGELEISEN:** THAT'S MY IMPRESSION FROM WHAT I
25 HAVE SO FAR.

1 **THE COURT:** ALL RIGHT. MR. MARTIKAN, DO YOU HAVE ANY
2 INFORMATION ABOUT THE SUCCESSION OF SEARCHES?

3 **MR. MARTIKAN:** I DO, YOUR HONOR. THE PHONE AND
4 LAPTOP WERE BOTH INITIALLY SEARCHED AT THE BORDER. AND REPORTS
5 OF THE SEARCHES OF THOSE WERE CREATED FOUR DAYS LATER. SO THERE
6 WERE INITIAL SEARCHES FOR CONTRABAND AT THE BORDER. AND THEN,
7 FOUR DAYS LATER THE SEARCH WAS COMPLETED AND REPORTS WERE
8 CREATED.

9 **THE COURT:** SO BY "COMPLETED" YOU MEAN ADDITIONAL OR
10 FURTHER SEARCHES OF THE COMPUTER?

11 **MR. MARTIKAN:** CORRECT.

12 **THE COURT:** AND WHERE DID THOSE OCCUR?

13 **MR. MARTIKAN:** THE FOUR DAYS LATER, THAT SEARCH
14 OCCURRED AT ICE IN SAN FRANCISCO.

15 **THE COURT:** ALL RIGHT. SO LET ME GO BACK AND ASK YOU
16 THIS QUESTION, COUNSEL. I WOULD LIKE TO FIND OUT, BECAUSE MAYBE
17 IT WILL HELP CRYSTALIZE THE ISSUE. MAYBE IT WILL AVOID YOUR
18 GOING ON MAYBE A LEGAL WILD GOOSE CHASE HERE, WHICH IS THE
19 QUESTION IS GOING TO BE: DOES THE DEFENDANT DISPUTE THE
20 FOLLOWING LEGAL PRINCIPLES?

21 ONE EXCEPTION TO THE WARRANT REQUIREMENT IS THAT A
22 SEARCH CONDUCTED AT THE INTERNATIONAL BORDER, WHICH IS BY ITS,
23 QUOTE:

24 "VERY NATURE REASONABLE UNDER THE FOURTH AMENDMENT
25 AND REQUIRES NEITHER A WARRANT, NOT -- NEITHER A

1 WARRANT, PROBABLE CAUSE OR EVEN ARTICULABLE
2 SUSPICION," UNQUOTE.
3 AND THAT'S QUOTING UNITED STATES VERSUS ALPHONSO, 759
4 F.2D 728 AT 733 TO 34.

5 IT'S A NINTH CIRCUIT 1985 CASE. AND ALSO FOR THE
6 SAME PROPOSITION, UNITED STATES VERSUS ROMM, R-O-M-M, 455 F.3D,
7 990 AT 996, A NINTH CIRCUIT CASE DECIDED IN 2006.

8 ADDITIONALLY, QUOTE:

9 "SEARCHES OF INTERNATIONAL PASSENGERS AT AMERICAN
10 AIRPORTS ARE CONSIDERED BORDER SEARCHES BECAUSE THEY
11 OCCUR AT THE, QUOTE, 'FUNCTIONAL EQUIVALENT OF THE
12 BORDER,' " END OF THE INTERNAL QUOTE AND THE BIG
13 QUOTE, CITING UNITED STATES VERSUS ARNOLD, 533 F.3D 1003 AT
14 1006, A NINTH CIRCUIT CASE DECIDED IN 2009 WHICH, IN TURN,
15 QUOTES ALMEIDA SANCHEZ, A-L-M-E-I-D-A S-A-N-C-H-E-Z V. UNITED
16 STATES, 413 U.S. 266 AT 273, DECIDED IN 1973.

17 SO DO YOU DISPUTE THOSE PRINCIPLES AS ENUNCIATED BY
18 THE NINTH CIRCUIT AND THE UNITED STATES SUPREME COURT?

19 **MR. BIGELEISEN:** YOUR HONOR, NOT TO THE EXTENT THAT
20 THE COURT HAS ARTICULATED THOSE. AND, OF COURSE, THAT'S GOING
21 TO BE ONE OF THE THINGS THAT WE'RE GOING TO ASK THE COURT TO
22 REVIEW AND CONSIDER WHEN THE MATTER IS PRESENTED FOR A MOTION TO
23 SUPPRESS.

24 WE HAVE -- AND THIS IS NOW MOVING AHEAD A LITTLE BIT.
25 BUT WE HAVE FOUND A LINE OF CASES WHICH SAYS THAT A PLENARY

1 BORDER SEARCH IS NOT PERMITTED IF IT IS PART OF AN ONGOING
2 CRIMINAL INVESTIGATION.

3 AND THAT IS ONE OF THE THINGS THAT WE WILL WANT TO
4 BRIEF TO YOU. AND KNOWING WHAT IT WAS THAT THE FEDERAL
5 GOVERNMENT KNEW AT THE TIME THAT MR. KYLE ENTERED THE COUNTRY
6 WILL HELP US TO PRESENT THAT TO YOU COMPLETELY TO HELP YOU TO
7 MAKE A DECISION IN THAT REGARD.

8 SO THAT'S ONE THING. SO, IN OTHER WORDS, WHAT DID
9 THE SAN FRANCISCO POLICE DEPARTMENT SAY TO THE CUSTOMS PEOPLE AT
10 THE BORDER BEFORE MR. KYLE ARRIVED THAT PROVOKED THEM TO SEARCH
11 HIS CELL PHONE AND HIS COMPUTER? AND WAS THIS PART OF AN
12 ONGOING CRIMINAL INVESTIGATION?

13 **MR. MARTIKAN:** AND THEN, OF COURSE --

14 **THE COURT:** ARE YOU SAYING -- ARE YOU SAYING THAT
15 THIS IS PART OF AN ONGOING CRIMINAL INVESTIGATION, THESE CASES
16 THAT YOU'RE ALLUDING TO, CONSTITUTE AN EXCEPTION TO THE GENERAL
17 RULE THAT A BORDER SEARCH IS APPROPRIATE UNDER THE FOURTH
18 AMENDMENT WITH OR WITHOUT PROBABLE CAUSE?

19 **MR. BIGELEISEN:** I BELIEVE THAT THERE IS CASE LAW
20 THAT SUPPORTS THAT. AND, IN FACT, THE COURT REMARKED ON THE
21 ARNOLD CASE, WHICH I LOOKED AT VERY BRIEFLY BEFORE I CAME IN
22 THIS MORNING. AND I THINK THAT THE ARNOLD CASE, ALTHOUGH IT
23 DOESN'T SAY SO DIRECTLY, SEEMS TO ADMIT OF THAT, AS WELL.

24 IN ANY EVENT, WHAT I'M SAYING IS THAT'S SOMETHING I
25 WOULD LIKE TO HAVE AN OPPORTUNITY TO BRIEF TO THE COURT

1 ADEQUATELY SO THAT THE COURT WILL BE ABLE TO DECIDE.

2 **THE COURT:** WELL, YOU HAVE THAT OPTION. BUT WE'RE AT
3 A DISCOVERY HEARING. AND THE QUESTION I HAVE IS: WHAT MORE ARE
4 YOU SEEKING? AND THE REASON I ASK THAT QUESTION IS ALL THE
5 COURT HAS IS WHAT THE PARTIES PRESENTED IN CONNECTION WITH THIS
6 MOTION.

7 AND IT'S FAIRLY CLEAR TO THE COURT WHAT HAPPENED
8 HERE. THERE WAS WHAT I MENTIONED BEFORE, THE CHAT INCIDENT AND
9 THE ALLEGED SHARING ONLINE WITH THE UNDERCOVER AGENT LEADING TO
10 THE SEARCH OF THE DEFENDANT'S HOUSE, WHICH FOUND SOME
11 INFORMATION, COMPUTERS WHICH INDICATED THAT THE DEFENDANT WAS
12 OUT OF THE COUNTRY AND RETURNING FIVE DAYS LATER.

13 THE ICE PEOPLE AND THE CUSTOMS PEOPLE WERE TIPPED OFF
14 THE DEFENDANT WOULD BE COMING IN. PURSUANT TO THAT TIP THE
15 DEFENDANT'S COMPUTER AND PHONE WAS SEARCHED. AND THE RESULTS
16 WERE THERE. SO YOU HAVE YOUR ISSUE.

17 MR. MARTIKAN, AM I MISSING ANYTHING IN SORT OF BOLD
18 STROKES HOW THIS WHOLE THING OCCURRED?

19 **MR. MARTIKAN:** NO, EXCEPT IT'S ALSO PROBABLY WORTH
20 THROWING IN THAT THE DEFENDANT WAS ARRESTED AT THE AIRPORT. SO
21 IT'S A LITTLE BIT UNLIKE SOME OF THE TYPICAL BORDER SEARCH CASES
22 BECAUSE HE'S ACTUALLY ARRESTED, SO HE WOULD HAVE BEEN SUBJECT TO
23 SEARCH INCIDENT TO ARREST, AS WELL.

24 **THE COURT:** ARRESTED AFTER THE SEARCH OR BEFORE THE
25 SEARCH?

1 **MR. MARTIKAN:** HE WAS ARRESTED -- WELL, THERE WAS AN
2 INITIAL SEARCH. THEN, HE WAS ARRESTED ON LOCAL WARRANTS, AND
3 THEN THAT SEARCH WAS COMPLETED FOUR DAYS LATER.

4 **THE COURT:** ALL RIGHT. SO THE QUESTION REALLY IS
5 GOING BACK TO THE PURPOSE OF WHY WE'RE HERE. GIVEN INFORMATION
6 THAT THIS COURT KNOWS FROM THE -- WHAT WAS PRESENTED BY THE
7 PARTIES AND IN SUPPORT OF THE MOTION, THE EVIDENTIARY MATERIAL,
8 THE DISCOVERY MATERIAL, WHAT MORE DOES THE DEFENDANT WANT TO
9 KNOW?

10 **MR. BIGELEISEN:** I WANT TO KNOW WHAT INFORMATION HAD
11 BEEN COMMUNICATED TO THE PEOPLE AT THE BORDER BY THE SAN
12 FRANCISCO POLICE DEPARTMENT BEFORE THEY STOPPED MR. KYLE AND
13 BEGAN TO QUESTION HIM AND BEFORE THEY ARRESTED HIM.

14 IN OTHER WORDS, WHAT DID THEY HE KNOW? WHAT DID THE
15 GOVERNMENT KNOW WHEN MR. KYLE ENTERED THE COUNTRY. THAT'S WHAT
16 I WANT TO KNOW.

17 **THE COURT:** ISN'T THAT BEFORE THE COURT? THERE WAS A
18 WARRANT ISSUED AND THEY SEARCHED THE DEFENDANT'S HOUSE. THEY
19 FOUND THESE -- THE COMPUTER, AND THEY FOUND INFORMATION WHICH
20 LED THEM TO BELIEVE THAT THE DEFENDANT WAS COMING BACK INTO THE
21 COUNTRY ON MARCH THE 15TH, RIGHT? ISN'T THAT WHAT -- ISN'T THAT
22 WHAT THE RECORDS SHOW?

23 **MR. BIGELEISEN:** IF THE COURT IS REFERRING TO THE
24 MATTER, THE MATERIALS THAT WERE ADDUCED BY THE SAN FRANCISCO
25 POLICE DEPARTMENT, YES. THE QUESTION IS: WHAT OF THAT

1 INFORMATION HAD BEEN COMMUNICATED TO THE CUSTOMS AND ICE PEOPLE
2 THAT THEY ACTED UPON AT THE BORDER? THAT'S WHAT I WANTED TO
3 KNOW.

4 **THE COURT:** WELL, THE PROBLEM IS THIS IS NOT A CIVIL
5 CASE WHERE YOU GET INTERROGATORIES. YOU GET MATERIALS THAT ARE
6 COVERED BY THE FEDERAL RULES, BRADY, AND ANY COMMON LAW.

7 AND SO UNLESS THERE'S A REPORT, A DOCUMENT THAT HAS
8 NOT BEEN TURNED OVER THAT IS OTHERWISE DISCLOSEABLE THAT YOU ARE
9 ENTITLED TO, THEY DON'T HAVE TO SIT HERE AND TELL YOU
10 INFORMATION UNLESS IT'S EMBODIED IN SUCH A DISCOVERABLE
11 DOCUMENT.

12 MR. MARTIKAN, IS THERE ANYTHING ADDITIONAL THAT THE
13 DEFENDANT WAS NOT GIVEN THAT WOULD REFLECT INFORMATION, WHATEVER
14 INFORMATION WAS PROVIDED TO THE FEDERAL AUTHORITIES AT THE
15 BORDER FROM THE SAN FRANCISCO POLICE?

16 **MR. MARTIKAN:** NO. AS FAR AS I KNOW -- AND I'M
17 FAIRLY CERTAIN OF THIS -- WE HAVE EVERYTHING WE -- WE HAVE
18 EVERYTHING FROM THE SFPD THAT THEY GENERATE.

19 **THE COURT:** ALL RIGHT. WELL, I THINK YOU HAVE --
20 WHATEVER YOUR ISSUE IS, YOU HAVE IT. YOU'LL BE ABLE TO ESTABLISH
21 THAT THE LOCALS NOTIFIED THE FEDS. AND BASED UPON THAT THE
22 WARRANT WAS ISSUED. ALTHOUGH, ACTUALLY, THE FEDS WERE INVOLVED,
23 AS WELL, WERE THEY NOT? BECAUSE THEY WERE THE ONES WHO DID THE
24 UNDERCOVER, THE STING ONLINE.

25 **MR. MARTIKAN:** INITIALLY. THE FBI, A DIFFERENT PART

1 OF THE FEDERAL GOVERNMENT, YES.

2 **THE COURT:** ALL RIGHT. SO THE BOTTOM LINE IS YOU
3 HAVE WHATEVER YOUR ENTITLED TO.

4 **MR. BIGELEISEN:** IF WE HAVE IT, I'M HAPPY. I WAS
5 CONCERNED ABOUT WHETHER THERE WAS A REPORT THAT THE BORDER
6 PEOPLE HAD CONCERNING THIS MATTER THAT WE DIDN'T HAVE. THAT'S
7 WHAT I WANTED TO KNOW.

8 **THE COURT:** IS THERE ANY SUCH THING?

9 **MR. MARTIKAN:** I'M SURE THAT THERE IS -- NOT A
10 REPORT, BUT I'M SURE THERE'S A RECORD, A COMPUTER-GENERATED
11 RECORD THAT HAS THE DEFENDANT'S NAME ON IT SO THAT THEY WOULD
12 KNOW TO LOOK OUT FOR HIM.

13 **THE COURT:** WELL, IF THERE'S ANY SUCH INFORMATION, DO
14 YOU HAVE ANY OBJECTION TO ASKING AND THEN TURNING IT OVER?

15 **MR. MARTIKAN:** YES, BECAUSE I DON'T THINK IT'S
16 DISCOVERABLE AS A GENERAL MATTER. BUT I ALSO THINK THAT IT'S
17 A -- I MEAN, IT'S AN INTERNAL LAW ENFORCEMENT REPORT THAT THEY
18 RELY ON.

19 **THE COURT:** WELL, HAVE YOU SEEN THIS REPORT?

20 **MR. MARTIKAN:** NO, I HAVEN'T SEEN IT. I'M
21 SPECULATING THAT HIS NAME MUST HAVE BEEN WRITTEN DOWN
22 SOMEWHERE.

23 **THE COURT:** YOU DON'T HAVE IT, THOUGH.

24 **MR. MARTIKAN:** NO.

25 **THE COURT:** WELL, HE CAN'T GIVE YOU WHAT HE DOESN'T

1 HAVE. AND IF IT'S JUST A NAME, THERE'S NO DISPUTE THAT IT
2 WAS -- PUTTING IT IN THE VERNACULAR, THE LOCALS DROPPED THE DIME
3 ON YOUR CLIENT TO THE FEDS. AND THAT'S WHY THEY PICKED HIM UP;
4 IS THAT CORRECT, MR. MARTIKAN, BASICALLY?

5 **MR. MARTIKAN:** YES.

6 **THE COURT:** WELL, YOU HAVE YOUR ISSUE, AND I'M
7 DENYING THE MOTION. I'M DENYING THE MOTION AT THIS POINT.

8 SO WITH RESPECT TO PHOTOS, THE DEFENDANT CLAIMS
9 THAT -- HE SAYS THAT IT APPEARS THAT THERE ARE MANY IMAGES THAT
10 HAVE NOT BEEN PRODUCED. THE GOVERNMENT HAS NOT HAD AN
11 OPPORTUNITY RESPOND THIS ISSUE, AS I -- SO FAR WHEN I LAST
12 LOOKED AT THIS, AS IT WAS RAISED IN THE REPLY.

13 SO WHAT IS THE ISSUE WITH RESPECT TO IMAGES TO WHICH
14 THE DEFENDANT MAY BE ENTITLED?

15 **MR. MARTIKAN:** I DON'T THINK THERE'S AN ISSUE, YOUR
16 HONOR, BECAUSE WE'VE ENTERED INTO A PROTECTIVE ORDER. WE DID
17 EARLY ON IN THIS CASE.

18 THE IMAGES I'M FAIRLY CERTAIN WE'RE TALKING ABOUT ARE
19 CONTRABAND IMAGES THAT ARE ON THESE COMPUTERS, AND THEY ARE
20 AVAILABLE TO THE DEFENSE AND REMAIN AVAILABLE TO THE DEFENSE TO
21 COME AND LOOK AT.

22 **THE COURT:** ALL RIGHT. WHAT'S --

23 **MR. BIGELEISEN:** WE'VE GOTTEN A LOT MORE DISCOVERY
24 SINCE WE STARTED ON THIS, YOUR HONOR. I THINK I'D LIKE TO DEFER
25 THAT AND TAKE A LOOK FURTHER AT WHAT WE HAVE. AND IF WE NEED TO

1 REVISIT IT, I'LL BRING IT BEFORE YOU.

2 **THE COURT:** ALL RIGHT. FAIR ENOUGH. AND MAYBE IF
3 THE GOVERNMENT HAS READILY AVAILABLE AN INVENTORY OF THE PHOTOS,
4 THE IMAGES THAT THEY ARE RELYING ON, THEY COULD SEND IT TO THE
5 DEFENDANT AND HE CAN CHECK IT AGAINST HIS LIST AND PURSUANT TO
6 THE PROTECTIVE ORDER, IF THERE'S ANYTHING MORE THEN THE
7 GOVERNMENT WILL MAKE IT AVAILABLE.

8 IS THAT ACCEPTABLE TO THE GOVERNMENT?

9 **MR. MARTIKAN:** YES, I THINK THAT'S BEEN DONE. WHAT
10 ICE DOES, AND TYPICALLY WHAT LAW ENFORCEMENT FORENSICS LABS DO
11 IS THEY RUN A SOFTWARE PROGRAM. ONE OF THEM IS CALLED "FTK" OR
12 FORENSIC TOOL KIT THAT CATALOGUES ALL OF THE IMAGES ON A
13 COMPUTER AND VIDEOS.

14 AND IT GENERATES A REPORT THAT LISTS THEM AND SHOWS
15 WHERE THEY ARE AS WELL AS THE META DATA FOR THOSE IMAGES.

16 AND THAT HAS BEEN TURNED OVER TO THE DEFENSE MINUS
17 THE IMAGES. AND SO THEY CAN COME AND SEE THAT REPORT WITH THE
18 IMAGES, OR THEY CAN HAVE THEIR EXPERT COME IN AND BASICALLY DO
19 THE SAME THING AND MAKE HIS OR HER OWN ANALYSIS.

20 **THE COURT:** ALL RIGHT. SO THERE YOU GO. SOUNDS LIKE
21 YOU ARE GOING TO GET WHAT YOU WANT.

22 **MR. BIGELEISEN:** I DON'T THINK THAT'S GOING TO BE A
23 PROBLEM. I DON'T WANT TO TROUBLE THE COURT WITH IT ANY FURTHER.

24 IF SOMETHING ELSE COMES UP, WE WILL COME BACK, BUT
25 WE'RE HAPPY TO WORK WITH COUNSEL ON THAT.

1 **THE COURT:** ALL RIGHT, VERY WELL.

2 NOW, THE NEXT ISSUE THAT WAS RAISED IN THE REPLY, SO
3 I'LL NEED TO GET THE GOVERNMENT'S POSITION, HAS TO DO WITH THE
4 ANALYSIS OF THE CAMERA. AND THE DEFENDANT WANTS TO KNOW HOW THE
5 GOVERNMENT CAN LINK SOME IMAGES FOUND ON HIS COMPUTER TO A
6 DIGITAL CAMERA FOUND IN THE APARTMENT.

7 IS THERE ANYTHING YOU CAN SHED? IS THERE THINKING
8 THAT EXISTS IN THAT REGARD?

9 **MR. MARTIKAN:** YES. AND THAT'S REALLY PART OF THE
10 SAME THING, YOUR HONOR. WHAT LINKS -- WE HAVE A CAMERA. BUT
11 WHAT LINKS THE IMAGES TO THE CAMERA IS ACTUALLY ON THE COMPUTER
12 AND NOT IN THE CAMERA. THE COMPUTER HAS IMAGES AND MANY OF
13 THOSE IMAGES HAVE META DATA THAT IDENTIFY THE CAMERA THAT THEY
14 COME FROM. SO THAT'S --

15 **THE COURT:** AND THAT'S WHAT YOU'RE MAKING AVAILABLE
16 TO THE DEFENDANT?

17 **MR. MARTIKAN:** YES.

18 **THE COURT:** ALL RIGHT. SO THERE YOU GO.

19 **MR. MARTIKAN:** IT'S SORT OF THAT SAME REPORT.

20 **THE COURT:** THERE YOU GO. YOU HAVE IT OR YOU WILL
21 SOON HAVE IT.

22 HAS THAT ALREADY BEEN DISCLOSED?

23 **MR. MARTIKAN:** WELL, AS I SAID, THE REPORT MINUS THE
24 IMAGES HAS BEEN DISCLOSED. IF THEY WANT TO SEE THE ACTUAL
25 PICTURE THAT GOES WITH THE META DATA THEY WOULD HAVE TO COME AND

1 LOOK AT IT. BUT IT'S BEEN AVAILABLE. IT IS AVAILABLE.

2 **THE COURT:** SO SEEMS LIKE THAT PARTICULAR REQUEST IS
3 MOOT AT THIS POINT.

4 **MR. BIGELEISEN:** WE HAVE SEEN SOME OF THE
5 PHOTOGRAPHS, YOUR HONOR.

6 **THE COURT:** ALL RIGHT. IF THERE'S ANY YOU FEEL YOU
7 DON'T HAVE -- THE GOVERNMENT BELIEVES IT'S TURNED ACCESS OVER TO
8 YOU TO ALL OF THEM -- THEN PLEASE LET THEM KNOW, AND I'M SURE
9 THEY WILL LET YOU SEE THEM.

10 SO ARE THERE ANY ISSUES THAT ARE LEFT? BECAUSE I
11 THINK I SUMMARIZED AS BEST I COULD, EVEN INCLUDING THE REPLY,
12 WHAT SEEMED TO BE AT ISSUE.

13 **MR. BIGELEISEN:** YOUR HONOR, THERE'S ONE OTHER
14 MATTER. AND THAT IS THERE WAS, I BELIEVE, A LOG OF THE COMPUTER
15 SESSION WHICH THE FBI AGENT HAD WITH MR. KYLE. AND THE
16 GOVERNMENT HAS SAID THEY DO NOT WANT TO PRODUCE THIS.

17 I'LL TELL YOU WHY I'M INTERESTED TO SEE IT. AND THAT
18 IS THE GOVERNMENT HAS MAINTAINED THROUGHOUT THAT THEIR INITIAL
19 COMMUNICATION WITH MR. KYLE HAS BEEN PEER TO PEER. IF THAT IS
20 THE CASE, THAT SETS THE TONE OF OUR DISCUSSION WITH REGARD TO
21 THE FOURTH AMENDMENT REVIEW OF THAT INITIAL COMMUNICATION.

22 HOWEVER, IF THE SCOPE OF THE GOVERNMENT'S
23 INVESTIGATION WAS OTHER THAN PEER TO PEER, THEN WE HAVE A
24 DIFFERENT ISSUE THAT WE WILL BRING BEFORE YOU.

25 AND, FOR EXAMPLE, IF THE INVESTIGATION WAS MORE IN

1 THE NATURE OF A WIRETAP OR A SEARCH OF ONE'S PAPERS, AS THE
2 FOURTH AMENDMENT WAS CONTEMPLATED, THEN WE WOULD BRING SOMETHING
3 ELSE BEFORE YOU.

4 AND WE THINK THAT THE LOG WILL TELL US WHETHER THIS
5 WAS, INDEED, LIMITED TO PEER TO PEER OR WHETHER THERE WAS MORE
6 TO IT THAT WE DON'T KNOW ABOUT.

7 **THE COURT:** ALL RIGHT.

8 **MR. BIGELEISEN:** SO THAT'S WHY WE WANT TO KNOW ABOUT
9 IT.

10 **THE COURT:** MR. MARTIKAN.

11 **MR. MARTIKAN:** WELL, YOUR HONOR, IT WAS A PEER TO
12 PEER INVESTIGATION. I MEAN, THE REPORTS THAT HAVE BEEN TURNED
13 OVER MAKE THAT CLEAR.

14 THIS IS A PARTICULAR PEER TO PEER CLIENT THE FBI
15 INVESTIGATES USING UNDERCOVER NAMES. SOME THAT THEY FRANKLY
16 MAKE UP AND SOME THAT THEY GET FROM OTHER PEOPLE WHO HAVE BEEN
17 ARRESTED. AND THEY USE THOSE TO GET INTO THIS PEER-TO-PEER
18 NETWORK AND DOWNLOAD IMAGES AND VIDEOS. SO IT IS PEER TO PEER.

19 **THE COURT:** OKAY. BUT IN TERMS OF THE DISCOVERY
20 REQUEST, IS THERE EITHER A LOG OR SOME DOCUMENTATION THAT THE
21 UNDERCOVER AGENT WAS KEEPING AS SHE WAS HAVING HER ALLEGED
22 COMMUNICATIONS WITH THE DEFENDANT?

23 **MR. MARTIKAN:** THERE IS -- THERE IS NOT A LOG THAT
24 THE AGENT CREATES. THERE IS A LOG THAT THE COMPUTER CREATES
25 WHICH IS LARGELY UNINTELLIGIBLE TO US HUMANS. THE ONLY ISSUE --

1 I MEAN, THE ISSUE THAT THE AGENT HAS IS THAT THAT LOG IN ONE
2 SESSION THAT THAT UNDERCOVER AGENT MAY BE USING SEVERAL
3 DIFFERENT CODE NAMES, WHICH SHE DOES NOT WANT TO DISCLOSE.

4 **THE COURT:** NOW, THERE SHOULD BE A WAY, HOWEVER, THE
5 NAME -- YOU'VE ALREADY DISCLOSED THE IDENTITY SHE WAS USING TO
6 COMMUNICATE WITH THIS DEFENDANT.

7 ISN'T THERE A WAY OF SANITIZING THAT SO THAT ONLY THE
8 SCREEN NAME SHE USED AND ONLY THE COMMUNICATIONS WITH THE
9 DEFENDANT, EVEN THOUGH THIS MAY BE, YOU KNOW, TO HUMANS
10 GIBBERISH, COULD BE PRESENTED?

11 **MR. MARTIKAN:** I MEAN, THERE'S ALWAYS A WAY OF
12 SANITIZING DOCUMENTS.

13 **THE COURT:** ALL RIGHT. WHY DON'T YOU ASK THE COMPUTER
14 FOLKS AT THE FBI? I'M SURE THIS COULD BE DONE. AND I DON'T
15 KNOW WHERE IT'S GOING TO LEAD, BECAUSE IT WAS FAIRLY MANIFEST TO
16 THE COURT FROM THE REPORTS THAT WERE ATTACHED, MANY OF THEM BY
17 THE DEFENDANT, THE DISCOVERY FROM THE GOVERNMENT, INDICATING
18 THAT THIS WAS A CLASSIC UNDERCOVER PEER-TO-PEER COMPUTER STING,
19 RATHER THAN ANY KIND OF WIRETAP. OR I DON'T KNOW EVEN HOW THAT
20 WOULD WORK IN THE SENSE THAT THE COMPUTER IS SITTING IN VIRGINIA
21 CHATTING ON A COMPUTER USING, YOU KNOW, AN ASSUMED NAME AND THEN
22 SHARING -- ALLEGEDLY SHARING THESE FILES.

23 SO I DON'T KNOW WHAT'S THERE. BUT WHY DON'T YOU LOOK
24 INTO THAT? AND HOW SOON CAN YOU DO THAT?

25 **MR. MARTIKAN:** I COULD -- WELL, TOMORROW'S A HOLIDAY.

1 I MEAN, IT'S JUST A PHONE CALL TO AN AGENT.

2 **THE COURT:** ALL RIGHT. WHY DON'T YOU TALK TO DEFENSE
3 COUNSEL ABOUT IT? AND IF IT CAN BE DONE IN A WAY THAT DOESN'T
4 COMPROMISE.

5 AND I'M NOT EVEN SURE THAT THIS IS -- THAT I CAN EVEN
6 ORDER YOU TO DO THIS. BUT I'M EXHORTING YOU TO DO IT BECAUSE IT
7 SEEMS THAT IT WOULD NOT BE CONTROVERSIAL. SO I'D LIKE TO KNOW
8 ABOUT THAT.

9 OH, OKAY. I'VE GOT NOTE THAT JUDGE CHESNEY IS
10 WAITING FOR YOU ON YOUR 2:00 O'CLOCK.

11 **MR. MARTIKAN:** IT'S AN EXCITING DAY, YOUR HONOR, YES.
12 I WILL LOOK INTO THAT.

13 **THE COURT:** ALL RIGHT. ALL RIGHT. I'M GOING TO MAKE
14 THIS GO MORE QUICKLY NOW.

15 THERE'S A -- I WANT TO ADVISE THE PARTIES THAT THERE
16 ARE PROBLEMS EXISTING IN EXHIBIT 26, WHICH HAS THE VICTIM'S
17 FIRST NAME. AND THAT NEEDS TO BE REDACTED. AND THE DOCUMENT
18 HAS BEEN LOCKED. AND I WANT THE DOCUMENT FULLY REDACTED WITHOUT
19 ANY NAMES IN THERE AND FILED UNDER SEAL OR FILED APPROPRIATELY,
20 ALL RIGHT, COUNSEL?

21 **MR. BIGELEISEN:** ABSOLUTELY. THANK YOU, YOUR HONOR,
22 VERY MUCH FOR CALLING THAT TO MY ATTENTION. I APOLOGIZE.

23 **THE COURT:** THAT'S ALL RIGHT. THAT'S ALL RIGHT.

24 HERE'S WHAT I WANT TO DO BEFORE MR. MARTIKAN -- THE
25 MARSHAL COMES FOR MR. MARTIKAN TO TAKE HIM INTO CUSTODY. WE

1 DON'T WANT THAT TO HAPPEN.

2 BUT I WOULD LIKE YOU TO GET YOUR CALENDARS OUT. I
3 WANT TO FLAT SET A DEADLINE. THIS IS WHAT THE COURT WANTS TO DO
4 GIVEN THE ISSUES IN THIS CASE AND THE AGE OF THIS CASE. I WANT
5 ANY MOTION TO SUPPRESS FULLY BRIEFED BY THE HOLIDAYS, AND I WANT
6 TO HAVE A HEARING IN EARLY JANUARY ON ANY MOTION TO SUPPRESS.

7 **MR. BIGELEISEN:** YOUR HONOR, MAY I ASK THE COURT'S
8 GRACE IN THAT REGARD? I'M GOING TO HAVE SURGERY ON THE 29TH OF
9 THIS MONTH. AND THE DOCTOR HAS TOLD ME THAT I SHOULD BE OUT OF
10 WORK FOR A WEEK THEREAFTER, AND THEN COME BACK PART-TIME ON THE
11 SIXTH OF DECEMBER.

12 AND SO IF THE COURT WOULD BE KIND ENOUGH TO ADJUST
13 THAT A LITTLE BIT, I'D BE VERY GRATEFUL.

14 **THE COURT:** WELL, SO YOU ARE GOING OUT ON THE 29TH.
15 TODAY IS THE 14TH? ELEVENTH.

16 **THE CLERK:** TENTH.

17 **THE COURT:** TENTH.

18 **MR. BIGELEISEN:** YES.

19 **THE COURT:** SO YOU'VE GOT 19 DAYS TO GET THIS ON FILE
20 BEFORE YOU GO OUT ON YOUR SURGERY. AND THEN, YOU'LL HAVE TIME.
21 YOU'LL HAVE AMPLE TIME TO REPLY. SO WHY CAN'T YOU DO IT IN THAT
22 PERIOD OF TIME?

23 THIS IS NOT A COMPLICATED AREA. THERE'S NOT A LOT
24 OF -- YOU'VE GOT -- THE COURT IS NOT ORDERING ANY ADDITIONAL
25 DISCOVERY.

1 THE ISSUES ARE FAIRLY SIMPLE. I'VE GIVEN YOU SOME
2 CASES. YOU'VE GIVEN ME --YOU HAVE GIVEN THEM TO ME, BUT THE
3 ISSUES ARE QUITE CRYSTAL CLEAR.

4 THE WARRANTS, TO THE EXTENT YOU ARE GOING TO ATTACK
5 THEM, STANDS ON THEIR OWN FOUR CORNERS. SO I DON'T KNOW WHY YOU
6 NEED MORE THAN 19 DAYS TO GET THIS ON FILE.

7 SO THAT'S WHAT YOU ARE GOING TO GET.

8 MS. OTTOLINI, LET'S PICK A DATE BY THE END OF THIS
9 MONTH.

10 **THE CLERK:** SO FRIDAY, NOVEMBER 26TH.

11 **THE COURT:** ALL RIGHT.

12 **MR. BIGELEISEN:** IF I --

13 **THE COURT:** MR. MARTIKAN, HOW MUCH TIME TO RESPOND,
14 TWO WEEKS?

15 **MR. MARTIKAN:** TWO WEEKS WOULD BE DECEMBER 10TH?

16 **THE CLERK:** TENTH.

17 **MR. MARTIKAN:** YES.

18 **THE COURT:** ALL RIGHT. AND REPLY BY THE 17TH.

19 IS THAT THE RIGHT DAY OF THE WEEK, MS. OTTOLINI?

20 **THE CLERK:** YES.

21 **THE COURT:** AND LET'S SET A HEARING IN JANUARY,
22 SPECIALLY SET HEARING. I DON'T WANT TO DO THIS ON THE REGULAR
23 CALENDAR.

24 **THE CLERK:** DO YOU WANT IT THE FIRST WEEK OF JANUARY
25 OR THE SECOND WEEK OF JANUARY, YOUR HONOR?

1 **THE COURT:** MID-JANUARY.

2 **THE CLERK:** SO JANUARY -- ON A WEDNESDAY?

3 **THE COURT:** PARDON ME?

4 **THE CLERK:** I WAS JUST LOOKING AT OUR CALENDAR.

5 **THE COURT:** ANY WEEKDAY THAT IS OPEN OTHER THAN
6 THURSDAY, THURSDAY AFTERNOON.

7 **THE CLERK:** RIGHT. WE'D HAVE TO GO TO THE WEEK OF
8 THE 18TH.

9 **THE COURT:** FINE. LET'S DO IT.

10 **THE CLERK:** SO JANUARY 19TH. MORNING OR AFTERNOON?

11 **THE COURT:** MORNING.

12 **THE CLERK:** AT 9:00 A.M.

13 **THE COURT:** ALL RIGHT. AND, COUNSEL, IF YOU BELIEVE
14 YOU ARE ENTITLED TO AN EVIDENTIARY HEARING, YOU SHOULD BE AS
15 SPECIFIC AS POSSIBLE IN TERMS OF WHAT KIND OF EVIDENCE -- WHAT
16 WITNESSES SO THE GOVERNMENT CAN MAKE THEM AVAILABLE.

17 **MR. BIGELEISEN:** OF COURSE.

18 **THE COURT:** AND THEN, THE COURT WILL RULE BASED UPON
19 THE GOVERNMENT'S RESPONSE ON WHETHER IT BELIEVES AN EVIDENTIARY
20 HEARING IS APPROPRIATE.

21 **MR. BIGELEISEN:** AND OF COURSE I'LL GIVE THE COURT
22 OUR BEST ESTIMATE OF HOW LONG WE WILL SPEND, AS WELL.

23 **THE COURT:** PERFECT. ALL RIGHT.

24 WELL, THANK YOU, COUNSEL.

25 ANYTHING FURTHER, MR. MARTIKAN?

1 **MR. MARTIKAN:** NO, YOUR HONOR. THANK YOU.

2 **MR. BIGELEISEN:** THANK YOU VERY MUCH, YOUR HONOR.

3 **MR. MARTIKAN:** OH, I'M SORRY. I'M SORRY, YOUR HONOR.

4 I THINK THAT TIME IS PROPERLY EXCLUDED FROM TODAY
5 UNTIL THE DAY THAT THE MOTION IS FILED ON THE 26TH FOR
6 PREPARATION OF COUNSEL SINCE WE WILL BE AT LEAST DISCUSSING
7 THESE DISCOVERY ISSUES, AND -- WELL, THAT'S THE REASON.

8 **THE COURT:** ALL RIGHT. DO YOU AGREE THAT THE TIME IS
9 PROPERLY EXCLUDABLE?

10 **MS. BRUGGISSER:** I THINK PROBABLY IT SHOULD BE
11 EXCLUDED THROUGH THE 19TH OF JANUARY, BUT, YES.

12 **THE COURT:** ALL RIGHT. WELL, WHY DON'T YOU PREPARE
13 THE APPROPRIATE STIPULATION AND ORDER THROUGH THE 19TH OF
14 JANUARY?

15 **MR. MARTIKAN:** THANK YOU.

16 **MR. BIGELEISEN:** THANK YOU.

17 (THEREUPON, THIS HEARING WAS CONCLUDED.)

18 STENOGRAPHY CERTIFICATION

19 "I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
20 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER."

21 /S/ KATHERINE WYATT
22 DATE 7-11-12
23 KATHERINE WYATT
24
25

~~KATHERINE WYATT, OFFICIAL REPORTER, RPR, RMR 925-212-5224~~